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FLUKE ELECTRONICS CORPORATION  
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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 FLUKE ELECTRONICS CORPORATION a  
Washington corporation,

12 Plaintiff,

13 v.  
14

STEPHEN MANGELSEN, a California resident;

15 Defendant.  
16

Case No.: C 08 01188

**PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION FOR MORE  
DEFINITE STATEMENT AND TO  
STRIKE SECOND CAUSE OF ACTION**

Date: June 23, 2008  
Time: 9:00 a.m.  
Room: 8, 4th Floor  
Judge: Honorable James Ware  
17

18 **INTRODUCTION**

19 This is an action to collect monies owed under a shareholder settlement agreement  
20 between Fluke Electronics Corporation and Mr. Mangelsen, the former Chief Financial Officer of  
21 Raytek Corporation. The actual agreement was provided to Mr. Mangelsen's attorney but  
22 contains a confidentiality provision so it was not attached to the complaint. The complaint  
23 describes the basis for Fluke's claims and restates the agreements the claim is based upon.  
24 Defendant's motion should be denied.

25 As the complaint alleges, Mr. Mangelsen remains one of the few shareholders who has  
26 refused to pay his share owing under the settlement agreement.  
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28

ARGUMENT

**A. Plaintiff's First Cause of Action alleging breach of contract complies with the liberal pleading standards of Rule 8(a) and is specific enough to apprise defendant of the substance of the claim being asserted.**

Defendant moves for a more definite statement of the breach of contract claim alleged in plaintiff's First Cause of Action. Defendant's motion should be denied.

The complaint alleges that:

- Defendant is a former shareholder and officer of Raytek Corporation, which merged with plaintiff Fluke Electronics Corporation. (Complaint, ¶¶ 8-9).
- Defendant and other former Raytek shareholders were served with a demand for arbitration arising out of pre-merger patent lawsuits and claims that were filed against Raytek. (Complaint, ¶10).
- On September 14, 2007, defendant and other former Raytek shareholders settled the claim. (Complaint, ¶11).
- Under the terms of the September 14, 2007 settlement agreement, defendant was to pay Fluke the sum of \$388,662.78. (Complaint, ¶12).
- Fluke demanded payment from defendant. (Complaint, ¶¶ 13-14).
- Defendant has refused to pay any of the amount due under the settlement agreement. (Complaint, ¶14).
- Plaintiff seeks damages in the amount of \$388,662.78 plus interest as a result of defendant's breach of the agreement. (Complaint, ¶20).

These allegations comply with the pleading requirements of Rule 8(a), which provides in part:

A pleading that states a claim for relief must contain:

...

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Defendant contends these allegations are too vague and ambiguous under Rule 12(e),

Page 2

1 which provides:

2 A party may move for a more definite statement of a pleading to  
3 which a responsive pleading is allowed but which is so vague or  
ambiguous that the party cannot reasonably prepare a response.

4 The complaint provides defendant with sufficient information to prepare a responsive pleading.

5 The complaint alleges that (1) a claim was brought against defendant in his capacity as a former  
6 shareholder and officer of a corporation; (2) the claim was resolved by a September 14, 2007  
7 settlement agreement that required defendant to pay plaintiff the sum of \$388,662.78; and (3)  
8 defendant breached the settlement agreement by refusing to pay. It is not credible that defendant  
9 is unable to formulate a response to this cause of action.

10 In *Cellars v. Pacific Coast Packaging, Inc.*, 189 F.R.D. 575, 578 (N.D. Cal. 1999), the  
11 court explained that motions for more definite statement are viewed with disfavor and are rarely  
12 granted. The court noted, "Generally, the Court will require a more definite statement only when  
13 the pleading is 'so vague or ambiguous that the opposing party cannot respond, even with a  
14 simple denial, in good faith or without prejudice to himself.'" *Id.* (Citations omitted).

15 Defendant contends he cannot frame a response because the complaint does not allege  
16 whether the agreement is written or oral. Defendant cites no authority requiring such an  
17 allegation, and the court in *Cellars* rejected a virtually identical contention. *Id.* at 578-579. If  
18 defendant contends there was no agreement, he can so allege in his answer. If he admits there  
19 was an agreement, he can also so allege and explain the type of agreement he admits.

20 Defendant contends the complaint is unclear because the agreement is not attached and  
21 the total amount of the settlement is not alleged. But defendant does not explain why he cannot  
22 frame a response to the allegations that are set forth in the complaint. Defendant also argues that  
23 the complaint must allege precisely what consideration he received for the settlement and what  
24 obligations plaintiff performed under the terms of the agreement. This type of detail is not  
25 required by Rule 8.

26 A complaint need not include every conceivable detail concerning the events alleged so  
27 long as the defendant can frame a responsive pleading. "While defendant may not have been  
28 able to ascertain all the details of plaintiffs' case from the complaint, that is not the function of

1 pleadings in the federal courts.” *Boxall v. Sequoia Union High School District*, 464 F. Supp.  
2 1104, 1113-1114 (N.D. Cal. 1979). “A Rule 12(e) motion is not a substitute for discovery; such  
3 a motion attacks unintelligibility in a pleading, not mere lack of detail.” *Wood v. Apodaea*, 375  
4 F. Supp. 2d 942, 949 (N.D. Cal. 2005). “If the detail sought by a motion for more definite  
5 statement is obtainable through discovery, the motion should be denied.” *Beery v. Hitachi Home*  
6 *Electronics (America), Inc.*, 157 F.R.D. 477, 480 (C.D. Cal. 1993) (citation omitted). “[A]  
7 motion for a more definite statement should not be granted unless the defendant literally cannot  
8 frame a responsive pleading.” *Bureerong v. Uvawas*, 922 F. Supp. 1450, 1461 (C.D. Cal. 1996).

9 The First Cause of Action contains a sufficient description of the breach of contract claim  
10 for defendant to formulate a response. The additional details sought by defendant can be  
11 obtained in discovery.

12 **B. The Federal Rules of Civil Procedure specifically permit claims for**  
13 **declaratory relief to be asserted in addition to claims seeking other remedies.**

14 Defendant asks the court to strike plaintiff’s Second Cause of Action for declaratory relief  
15 on the basis that any appropriate relief can be obtained through the breach of contract action. But  
16 actions for declaratory relief are not as circumscribed as defendant suggests.

17 Rule 57 specifically provides:

18 The existence of another adequate remedy does not preclude a  
19 declaratory judgment that is otherwise appropriate.

20 The Advisory Committee Notes to Rule 57 further explained, “[T]he fact that another remedy  
21 would be equally effective affords no ground for declining declaratory relief.”

22 It is somewhat puzzling that defendant contends plaintiff’s breach of contract claim is so  
23 vague as to be unintelligible, while asserting with confidence that a declaratory relief action is  
24 completely unnecessary because the breach of contract claim will resolve everything. It would  
25 be premature and inappropriate to strike plaintiff’s declaratory relief claim before all the contours  
26 of the parties’ disputes have been identified. Defendant does not assert that he will be prejudiced  
27 or that the litigation will be more complex or costly if the declaratory relief cause of action is not  
28 stricken. The court should exercise its discretion in favor of allowing the declaratory relief claim

1 to proceed until it can be determined whether the breach of contract claim will in fact resolve all  
2 the disputes between the parties.

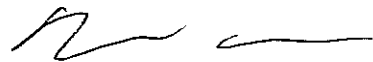
3 **CONCLUSION**

4 Defendant's motion for more definite statement should be denied because plaintiff's First  
5 Cause of Action contains a short and plain statement of plaintiff's breach of contract claim to  
6 which defendant can formulate a response. Defendant's motion to strike plaintiff's Second  
7 Cause of Action should be denied because Rule 57 expressly provides that the existence of  
8 another adequate remedy does not preclude a declaratory judgment, defendant has identified no  
9 prejudice, and striking the cause of action would be premature.

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12 DATED: June 2, 2008

Respectfully submitted,

13 BARBER LAW GROUP

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15 \_\_\_\_\_  
16 Bryan M. Barber  
17 Attorney for Plaintiff  
FLUKE ELECTRONICS CORPORATION

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